

Instructions for Form 5330

(Revised June 1990)

Return of Excise Taxes Related to Employee Benefit Plans

(Section references are to the Internal Revenue Code unless otherwise specified.)

General Information

Paperwork Reduction Act Notice.—We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us this information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping.	12 hrs. 40 min.
Learning about the law or the form.	8 hrs. 02 min.
Preparing and sending the form to IRS	8 hrs. 37 min.

If you have any comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; and the **Office of Management and Budget**, Paperwork Reduction Project (1545-0575), Washington, DC 20503. **DO NOT** send this form to either of these offices. Instead, see the instructions below for information on where to file.

Purpose

This return is to be used to report the tax on: (i) a minimum funding deficiency (section 4971); (ii) excess contributions to a section 403(b)(7)(A) custodial account (section 4973(a)); (iii) a prohibited transaction occurring after December 31, 1974 (section 4975); (iv) a disqualified benefit provided by funded welfare plans (section 4976); (v) excess fringe benefits (section 4977); (vi) certain ESOP dispositions (sections 4978, 4978A, and 4978B); (vii) nondeductible contributions to qualified plans (section 4972); (viii) excess contributions to plans with cash or deferred arrangements (section 4979); (ix) certain prohibited allocations of qualified securities by an ESOP (section 4979A); and (x) reversions of qualified plan assets to employers (section 4980).

This return is also to be used to make the election under section 2003(c)(1)(B) of the Employee Retirement Income Security Act of 1974 (ERISA). This election allows a disqualified person to elect to pay the section 4975 tax on a prohibited transaction which took place prior to January 1, 1975, in order to avoid loss of the exempt status of the trust.

Who Must File

A Form 5330 must be filed by:

(1) any employer who fails to meet the minimum funding standards under section 412 (for liability for tax in case of an employer who is a party to a collective bargaining agreement, see section 413(b)(6)); or

(2) any individual with respect to whom there has been made an excess contribution to a section 403(b)(7)(A) custodial account and which excess has not been eliminated as specified in sections 4973(c)(2)(A) and (B); or

(3) any disqualified person who participates in a prohibited transaction (other than a fiduciary acting only as such, or an individual (or his beneficiary) who engages in a prohibited transaction with respect to his individual retirement account) for each tax year or part thereof in the "taxable period" applicable to such prohibited transaction; or

(4) any employer who maintains a funded welfare plan that provides a disqualified benefit during any tax year; or

(5) any employer who pays excess fringe benefits and has elected to be taxed under section 4977 on such payments; or

(6) any employer or worker-owned cooperative (as defined in section 1042(c)(2)) that maintains an ESOP plan which disposes of the qualified securities (as defined in section 1042(c)(1)) or section 133 securities within the specified 3-year period. See instructions for Part VI for more specific instructions on the excise tax under sections 4978, 4978A, and 4978B;

(7) any employer who is liable for the tax under section 4972 for nondeductible contributions to qualified plans;

(8) any employer who is liable for the tax under section 4979 on excess contributions to plans with a cash or deferred arrangement;

(9) any employer or worker-owned cooperative that made the written statement described in section 1042(b)(3)(B) and made an allocation prohibited under section 409(n) of qualified securities of an ESOP taxable under section 4979A; and

(10) any employer who receives an employer reversion from a deferred compensation plan that is taxable under section 4980.

The payment of tax and filing of Form 5330 is required for each year in which you fail to meet the minimum funding standards under section 412, or contribute an excess amount to your 403(b)(7)(A) custodial account, and for each year that involves any of the actions described in (3) through (9) above. The payment of tax and filing of Form 5330 is also required for each year (or part thereof) in the "taxable period" applicable to a prohibited transaction. See Part III of the instructions for definition of **taxable period**. The payment of tax and filing of Form 5330 are also required with respect to each qualified plan where there is a reversion of plan assets from that plan that is taxable under section 4980.

Definitions

A. Plan.—For purposes of these definitions, the term "plan" means a trust described in section 401(a) which forms part of a plan, or a plan described in section 403(a) which trust or plan is exempt from tax under section 501(a), an individual retirement account described in

section 408(a), or an individual retirement annuity described in section 408(b). For purposes of the tax on minimum funding deficiencies and prohibited transactions, a trust, plan, account, or annuity which, at any time, has been determined by the Internal Revenue Service to be a trust, plan, account, or annuity as described in the preceding sentence, is a plan subject to these taxes.

A trust described in section 501(c)(22) is considered a plan for purposes of prohibited transactions.

B. Disqualified Person.—A "disqualified person" is any person who is:

(1) a fiduciary;

(2) a person providing services to the plan;

(3) an employer, any of whose employees are covered by the plan;

(4) an employee organization, any of whose members are covered by the plan;

(5) an owner, direct or indirect, of 50% or more of—(a) the combined voting power of all classes of stock entitled to vote, or the total value of shares of all classes of stock of a corporation, (b) the capital interest or the profits interest of a partnership, or (c) the beneficial interest of a trust or unincorporated enterprise, which is an employer or an employee organization described in (3) or (4);

(6) a member of the family of any individual described in (1), (2), (3), or (5) (member of a family is the spouse, ancestor, lineal descendant, and any spouse of a lineal descendant);

(7) a corporation, partnership, or trust or estate of which (or in which) 50% or more of the interest described in (5)(a), (b), or (c). For purposes of (c), the beneficial interest of the trust or estate is owned directly or indirectly, or held by persons described in (1), (2), (3), (4), or (5);

(8) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10% or more shareholder, or highly compensated employee (earning 10% or more of the yearly wages of an employer) of a person described in (3), (4), (5), or (7);

(9) a 10% or more (in capital or profits) partner or joint venturer of a person described in (3), (4), (5), or (7); or

(10) any disqualified person, as described in (1) through (9) above, who is a disqualified person with respect to any plan to which a section 501(c)(22) trust is permitted to make payments under section 4223 of ERISA.

C. Prohibited Transaction.—A "prohibited transaction" is any direct or indirect:

(1)(a) sale or exchange, or leasing of any property between a plan and a disqualified person; (b) transfer of real or personal property by a disqualified person to a plan where the property is subject to a mortgage or similar lien placed on the property by the disqualified person within 10 years prior to the transfer or the property transferred is subject to a mortgage or similar lien which the plan assumes;

(2) lending of money or other extension of credit between a plan and a disqualified person;

(3) furnishing of goods, services, or facilities between a plan and a disqualified person;

(4) transfer to, or use by or for the benefit of, a disqualified person of income or assets of a plan;

(5) act by a disqualified person who is a fiduciary whereby he (she) deals with the income or assets of a plan in his (her) own account; or

(6) receipt of any consideration for his (her) own personal account by any disqualified person who is a fiduciary from any party

dealing with the plan connected with a transaction involving the income or assets of the plan.

D. Exemptions.—See section 4975(d) for specific exemptions to prohibited transactions.

In addition, section 2003(c)(2) of ERISA contains rules which delay the application of section 4975 for certain arrangements in effect on June 30, 1974. Furthermore, certain other transactions or classes of transactions have been exempted pursuant to section 4975(c)(2).

General Instructions

A. When and Where To File.—

(1) **For taxes due other than section 4971 tax, section 4977 tax, section 4979 tax, section 4980 tax, or tax resulting from an election to be taxed under section 2003(c)(1)(B) of ERISA**, this return is to be filed on or before the last day of the seventh month after the end of the tax year of the employer or other person who must file this return. However you may be granted an extension of time to file this return if the request is made in writing on or before the due date for filing this return. **Form 5558**, Application for Extension of Time to File Certain Employee Plan Returns, may be used to request this extension. Such extension shall not exceed 6 months.

(2) **For tax due under section 4971**, this return is to be filed on or before the later of the last day of the 7th month after the end of the employer's tax year or 8½ months after the last day of the plan year that ends with or within the employer's tax year. However a request for an extension of time to file may be granted as explained in the paragraph above.

(3) **For tax due under section 4977**, this return is to be filed on or before the last day of the seventh month after the end of the calendar year in which the excess fringe benefits were paid to your employees. However a request for an extension of time to file may be granted as explained in paragraph (1) above.

(4) **For tax due under section 4979**, this return is to be filed on or before the due date of the employer's income tax return for the taxable year with or within which the plan year ends for which the section 4979 tax was incurred.

(5) **For tax due under section 4980**, this return is to be filed no later than the last day of the month following the month in which the reversion occurred.

(6) **For tax due resulting from an election to be taxed under section 2003(c)(1)(B) of ERISA**, this return is to be filed prior to 120 days after the date of notification, under section 1.503(a)-1(c) of the income tax regulations, that the trust shall not be exempt from taxation under section 501(a) because it engaged in a pre-1975 prohibited transaction.

This tax return should be filed as indicated on the following chart.

If the taxpayer is located in	Use the following Internal Revenue Service Center address
▼	▼
Connecticut, Delaware, District of Columbia, Foreign address, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia	Holtsville, NY 00501

Alabama, Alaska, Arkansas, California, Florida, Georgia, Hawaii, Idaho, Louisiana, Mississippi, Nevada, North Carolina, Oregon, South Carolina, Tennessee, Washington

Atlanta, GA 39901

Arizona, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Utah, West Virginia, Wisconsin, Wyoming

Memphis, TN 37501

B. Name, Address, etc.—The name of the employer or the name of the individual on whom the tax is imposed should appear on the line designated on page 1 as well as the plan year etc. If an employer is filing this return, the employer's identification number should be entered to the right of the name in the space indicated. If an individual (other than a sole proprietor filing as an employer) is filing this return, the individual's social security number should be entered to the right of the name in the space indicated.

C. Signature of Preparer.—If someone fills out your return and does not charge you, that person should not sign your return. For example, your regular full-time employee or your partner in business does not have to sign. (This example is not all inclusive.)

Generally, anyone who is paid to prepare your return must sign your return and fill in the other blanks in the Paid Preparer's Use Only area of your return.

Reminders

Penalties and Interest

A. Interest.—Interest will be charged on taxes not paid on or before their due date, even if an extension of time to file is granted.

B. Late Filing of Return.—The law provides a penalty of from 5% to 25 % of the tax due for filing late unless you can show reasonable cause for the delay. If you file a return late, attach an explanation to your return.

C. Late Payment of Tax.—Generally, the penalty for not paying tax when due is ½ of 1% of the unpaid amount for each month or part of a month it remains unpaid. The maximum penalty is 25% of the unpaid amount. The penalty applies to any unpaid tax shown on a return. It also applies to any additional tax shown on a bill if it is not paid within 10 days from the date of the bill. The penalty is in addition to the applicable interest charge on late payments.

D. Claim for Refund or Credit/Amended Return.—To claim a refund of overreported taxes reportable on Form 5330, a credit for overreported but unpaid taxes, or to report additional taxes due, you should file an amended Form 5330. Write "Amended Return" at the top of page 1 of the return and report the correct amount of taxes in Parts I through X, as appropriate, and on lines 21 through 31a of Part XI. On line 31b, cross out "Form 5558, if applicable, write in 'original return,' and enter the amount of tax reported on the original return. If the amended return represents a claim for refund or credit, show the amount of overreported tax in parentheses on line 31c. Otherwise, show the amount of additional tax due on line 31c and pay it with the filing of the amended return.

Specific Instructions

Part I

Taxes on Failure To Meet Minimum Funding Standards

If your plan has an accumulated funding deficiency as defined in section 412 (section 418B if this is a multiemployer plan in reorganization), complete lines 1 and 3. Complete line 2 only if the alternative minimum funding standards account is used. (See Schedule B (Form 5500) and Form 5500 or Form 5500-C/R, whichever is applicable.) Enter 10% of line 1 on line 3; or if line 2 applies, enter the lesser of line 1 or 10% of line 2 on line 3 for plan years beginning after December 31, 1988. For plan years beginning before January 1, 1989 and for multiemployer plans insert 5% for the 10% mentioned in the preceding sentence.

Note: For plan years beginning after December 31, 1987, except in the case of a multiemployer plan, all members of a controlled group are jointly and severally liable for this tax.

A "controlled group" in this case means a controlled group of corporations (section 414(b)), a group of trades or businesses under common control (section 414(c)), an affiliated service group (section 414(m)), and any other group treated as a single employer under section 414(o).

Part II

Taxes on Excess Contributions to Section 403(b)(7)(A) Custodial Accounts

Line 5.—The amount excludable for your taxable year is the lesser of:

(a) The exclusion allowance which is the excess of: (i) 20% of your compensation includable in gross income (do not include any amount contributed by your employer for your annuity) from your employer multiplied by the number of years of service as of the end of your taxable year for which you are computing this exclusion allowance over (ii) the aggregate of the amounts which have been contributed by your employer and excludable from your gross income in prior years; or

(b) The annual employer contribution limitation. Since tax-sheltered annuities are considered defined contribution plans, the limitation is the lesser of:

(1) \$30,000 (or if greater of the dollar limitation in effect under section 415(b)(1)(A)) or

(2) 25% of the employee's compensation for the year

If you are an employee of an educational institution, hospital, or home health service agency, you may elect alternative limitations under section 415(c)(4)(A), (B), or (C).

Part III

Tax on Prohibited Transactions

Note: Section 141.4975-13 of the Temporary Excise Tax Regulations provides that, until superseded by permanent regulations under section 4975(f), the definitions of "amount involved" and "correction" found in section 53.4941(e)-1 of the Foundation Excise Tax Regulations will be controlling.

Line 13a, Column (a).—List all prohibited transactions that took place in connection with a particular plan during the current taxable year. Also list all prohibited transactions that took place in prior years unless either the transaction was corrected in a prior tax year or the section 4975(a) tax was assessed in the prior tax year. A disqualified person or

individual who engages in a prohibited transaction with more than one plan must file a separate Form 5330 to report the section 4975 tax(es) due with respect to each plan.

Remember transactions involving the use of money (loans, etc.) or other property (rent, etc.) will be treated as giving rise to a new prohibited transaction on the first day of each succeeding taxable year or portion of a succeeding taxable year which is within the taxable period.

Column (c). Amount involved in prohibited transaction.—The ‘amount involved’ with respect to a prohibited transaction means the greater of the amount of money and fair market value of the other property given, or the amount of money and the fair market value of the other property received, except that in the case of services described in sections 4975(d)(2) and (10) the amount involved shall be only the excess compensation. Fair market value shall be determined as of the date on which the prohibited transaction occurs. Where the use of money or other property is involved, the amount involved shall be the greater of the amount paid for such use or the fair market value of such use for the period for which the money or other property is used. Further transactions involving the use of money or other property will be treated as giving rise to a prohibited transaction occurring on the date of the actual transaction plus a new prohibited transaction on the first day of each succeeding taxable year or portion of a succeeding taxable year which is within the ‘taxable period.’ The **taxable period** is the period of time beginning with the date of the prohibited transaction and ending with the earliest of: (i) the date correction is completed, (ii) the date of the mailing of a notice of deficiency, or (iii) the date on which the tax under section 4975(a) is assessed. See the instruction for line 33 for the definition of “correction.”

The following example of a prohibited transaction does not cover all types of prohibited transactions. For more examples, see the Regulations section 53.4941(e)-1(c)(5).

Example: A disqualified person borrows money from a plan. The fair market value of the use of the money and the actual interest on the loan is \$1,000 per month. The loan was made on July 1, 1989, and repaid on December 31, 1990 (date correction is completed). The disqualified person’s tax year is the calendar year. The disqualified person files a Form 5330 for the tax years 1989 and 1990 on July 31, 1990 (date tax was assessed), and July 31, 1991, respectively.

From the above facts the ‘taxable period’ for the first prohibited transaction runs from July 1, 1989 (date of loan), through July 31, 1990 (date tax was assessed). The ‘taxable period’ for the second prohibited transaction runs from January 1, 1990, through December 31, 1990 (date of correction).

The disqualified person files a Form 5330 for 1989 on July 31, 1990, paying the tax due on the first prohibited transaction which occurred on July 1, 1989. The amount involved to be reported on the Form 5330 filed for 1989 is \$6,000 (6 months × \$1,000). The amount involved in the second prohibited transaction, which is deemed to have occurred on January 1, 1990, is \$12,000 (12 months × \$1,000).

Since the taxable period of the first prohibited transaction ended July 31, 1990, and the taxable period of the second prohibited transaction ended December 31, 1990, at least part of the year 1990 is in both taxable periods. Therefore, the amount reported on Form 5330 filed for 1990 would include both the first prohibited transaction of July 1, 1989, \$6,000, and the second prohibited transaction of January 1, 1990, \$12,000. Therefore, item 13 of Form 5330 would be completed as shown below.

Part IV

Tax on Disqualified Benefits With Respect to Funded Welfare Plans

Section 4976 imposes an excise tax on employers who maintain a funded welfare benefit plan that provides a disqualified benefit during any taxable year. The tax is equal to 100% of the disqualified benefit.

A disqualified benefit is:

- (1) any post-retirement medical benefit or life insurance benefit provided with respect to a key employee unless the benefit is provided from a separate account established for the key employee under section 419A(d);
- (2) any post-retirement medical or life insurance benefit unless the plan meets the nondiscrimination requirements of section 505(b) with respect to such benefits; or
- (3) any portion of the fund that reverts to the benefit of the employer

Part V

Tax on Excess Fringe Benefits

If you made an election to be taxed under section 4977 in order to continue your nontaxable fringe benefit policy that was in existence on or after January 1, 1984, check the ‘Yes’ box on line 15a and complete lines 15b through d.

Line 15c.—Excess fringe benefits are the aggregate value of the nontaxable fringe benefits under sections 132(a)(1) and 132(a)(2) over 1% of the aggregate compensation paid by you to your employees during the calendar year that was includible in the employees’ gross income.

Line 15d.—Your tax is 30% of the line 15c amount. Enter the amount of tax on this line and on line 25.

Part VI

Tax on Certain ESOP Dispositions

Caution: Section 4978A does not apply to the estate of a decedent whose death occurred after December 19, 1989.

Line 16a.—Report your section 4978 or section 4978A tax on line 16a. Check the box provided on line 16a to indicate which tax you are reporting. If you owe both section 4978 and section 4978A tax, you must file a separate Form 5330 for each tax.

Section 4978 imposes an excise tax on dispositions of securities acquired in a sale to which section 1042 applied if the dispositions take place within 3 years after the date of the acquisition of the qualified securities (as defined in section 1042(c)(1)). If an ESOP or eligible worker-owned cooperative (as defined in section 1042(c)(2)) disposes of the qualified securities within the 3-year period described above and: (1) the total number of shares held by such plan or cooperative after such disposition is less than the total number of employer securities held immediately after such sale, or (2) except to the extent provided in regulations, the value of qualified securities held by such plan or cooperative after such disposition is less than 30% of the total value of all employer securities as of such disposition, there is a tax equal to 10% of the amount realized on the disposition of the qualified securities. See section 4978(b)(2) for the limitation on the amount of tax.

Example for 1989

PART III.—Tax on Prohibited Transactions

13a Transaction number	(a) Date of transaction (see instructions)	(b) Description of prohibited transaction	(c) Amount involved in prohibited transaction (see instructions)	(d) Initial tax on prohibited transaction (5% of column (c)) (see instructions)
(i)	7-1-89	Loan	\$6,000	\$300
(ii)				
(iii)				
b Tax due —Add amounts in column (d). Enter here and on line 23				\$300

Example for 1990

PART III.—Tax on Prohibited Transactions

13a Transaction number	(a) Date of transaction (see instructions)	(b) Description of prohibited transaction	(c) Amount involved in prohibited transaction (see instructions)	(d) Initial tax on prohibited transaction (5% of column (c)) (see instructions)
(i)	7-1-89	Loan	\$6,000	\$300
(ii)	1-1-90	Loan	12,000	600
(iii)				
b Tax due —Add amounts in column (d). Enter here and on line 23				\$900

This tax shall be paid by the employer or the eligible worker-owned cooperative that made the written statement described in section 1042(b)(3)(B) on dispositions that occurred during their tax year.

Section 4978 tax shall not apply to a distribution to employees of qualified securities made by reason of:

- (1) the death of the employee;
- (2) the retirement of the employee after the employee has attained 59½ years of age;
- (3) the disability of the employee (within the meaning of section 72(m)(7)); or
- (4) the separation of the employee from service for any period which results in a 1-year break-in service (within the meaning of section 411(a)(6)(A)).

Also, in the case of an exchange of qualified securities in a reorganization described in section 368(a)(1) for stock of another corporation, such exchange shall not be treated as a disposition for purposes of section 4978.

Section 4978A imposes a tax on certain transactions involving qualified employer securities. Qualified employer securities for purposes of this tax are defined in section 2057(d).

Section 4978A taxes any disposition of qualified employer securities acquired on or before 12-20-89, if the disposition of the qualified securities takes place within 3 years after the date on which the ESOP or eligible worker-owned cooperative acquired the qualified securities.

The section 4978A tax also applies to dispositions of qualified securities that occur after the 3-year period if the qualified securities either were not allocated to participants' accounts or the proceeds from the disposition were not allocated to the participants' accounts.

The tax under section 4978A is equal to 30% of the amount realized on the disposition or 30% of the amount realized on the last date

Part VII

Tax on Nondeductible Employer Contributions to Qualified Plans

Section 4972 imposes an excise tax on employers who make nondeductible contributions to their qualified plans. A qualified plan for purposes of this tax means any plan qualified under section 401(a), any annuity plan qualified under section 403(a), and any simplified employee pension qualified under section 408(k).

The nondeductible contributions are computed as of the end of the employer's taxable year. The current year nondeductible contributions are equal to the amount contributed during the employer's taxable year over the amount of contributions allowable as a deduction under section 404. In addition, prior year nondeductible contributions (for taxable years beginning after December 31, 1986) continue to be subject to this tax annually until eliminated by either distributions to the employer of the amount of nondeductible contributions, or a carryforward deduction in years after the nondeductible contributions are made.

Note: Although pre-1987 nondeductible contributions are not subject to this excise tax, they are taken into account in determining the extent to which post-1986 contributions are deductible. See section 4972 and **Publication 560, Self-Employed Retirement Plans**, for more details.

Part VIII

Tax on Excess Contributions to Plans With a Cash or Deferred Arrangement

Section 4979.—Any employer who maintains a plan described in section 401(a), 403(a), 403(b), 408(k), or 501(c)(18) may be subject to an excise tax on the excess aggregate contributions made on behalf of highly

employer contributions that could have been made without violating the special nondiscrimination requirements of section 401(k)(3).

The 'excess aggregate contributions' subject to the section 4979 excise tax are equal to the amount by which the aggregate matching contributions of the employer and the employee contributions (and any qualified nonelective contribution or elective contribution taken into account in computing the contribution percentage under section 401(m)) actually made on behalf of the highly compensated employees for each plan year exceed the maximum amount of such contributions permitted in the contribution percentage computation under section 401(m)(2)(A).

However, there is no tax liability if the excess contributions or the excess aggregate contributions (and income allocable to) are distributed (or, if forfeitable, forfeited) to the participants for whom the excess contributions were made within 2½ months after the end of the plan year.

Part IX

Section 4979A.—Report on lines 19 and 29 the section 4979A tax on the prohibited allocation of qualified securities by any ESOP or eligible worker-owned cooperative. The tax is equal to 50% of the prohibited allocation.

Part X

Section 4980.—Include on lines 20b and 30 the section 4980 tax on employer reversions from a qualified plan. The tax is equal to 15% of the reversion amount.

Part XI

Line 32.—If you are electing as provided under section 2003(c)(1)(B) of ERISA to have section 4975 apply to a prohibited transaction which occurred prior to January 1, 1975, check